BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5361 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

MEREDITH A. REED
(Claimant)
S.S.A. No.

RICHFIELD OIL CORPORATION
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-187

FORMERLY
BENEFIT DECISION
No. 5361

On February 11, 1949, the above-named claimant appealed the decision of a Referee (LA-19843) which affirmed a determination of the Department of Employment holding him disqualified for benefits under Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code).

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately four and one-half years as an instrument repairman by the above-named employer at its oil refinery in the Los Angeles area. A strike was called by the claimant's union in September, 1948, which resulted in the establishment of picket lines at the plant in which the claimant was employed. The claimant actively participated in picketing activities during the period of the strike, which ended in a settlement agreement on November 9, 1948. Pursuant to a provision of the agreement

the claimant was notified by the employer on November 12, 1948, that he was discharged as of November 10, 1948, because of alleged improper activities during the strike.

On November 15, 1948, in the Long Beach office of the Department of Employment, the claimant registered for work and reopened a claim for benefits originally filed to establish his benefit year on February 3, 1948. On December 8, 1948, the Department issued a determination disqualifying the claimant for benefits under Section 58(a)(2) of the Act (now section 1256 of the code) from November 15, 1948, to December 19, 1948, on the ground that he had been discharged for misconduct connected with his work. The claimant appealed this determination to a Referee, who on February 3, 1949, issued his aforesaid decision affirming the determination and denying benefits whereupon this appeal was taken.

A provision of the strike settlement agreement provides in pertinent part as follows:

> "The employer has evidence that in connection with the strike certain employees have engaged in acts or threats of violence towards other employees or to the property of the employer, or acts constituting physical interference with restraint or coercion of other employees entering or attempting to enter the property of the employer. If the employer discharges or refuses to reinstate such an employee . . . he shall be given a hearing. . . . The hearing will be by a committee consisting of two representatives appointed by the employer and two representatives appointed by the union, at which hearing such committee shall hear the circumstances and review the evidence against each employee and will hear the evidence of the employee or any others on his behalf. In the event the employee is discharged or refused reinstatement he shall not be reentitled to claim any rights or benefits under the new article of the agreement. . . ."

The claimant exercised his right to request a hearing under this provision after receiving his notice of discharge.

On November 29, 1948, a hearing to review the claimant's discharge was held before a joint panel constituted under the quoted provision of the agreement. Later, the panel issued its ruling sanctioning the discharge by a three-to-one vote and recommending leniency. No phonographic record of the hearing was kept. The only evidence before us with respect to the content of this proceeding is the sworn testimony of the claimant given at the hearing before the Referee. An employer representative was present at that hearing, but testified that he had no knowledge of what transpired at the hearing before the panel and could not, even by hearsay, testify as to what the panel's findings of fact were.

The evidence discloses that the claimant took an active part in the strike. He admitted that he was considered a "nuisance" by the plant management during the course of his picketing activities, because he energetically sought to dissuade workers from entering the plant. However, he insisted that he never at any time indulged in profanity nor engaged in acts or threats of violence towards other employees or the property of the employer, and denied exercising any physical interference, restraint or coercion on other employees or with respect to the property of the employer. Typical of the charges specified against him was one that he obstructed the progress of cars and trucks into the employer's plant. The claimant admitted that on several occasions he signalled such vehicles to stop and then when they did stop he conversed with their occupants in an attempt to persuade them not to enter the company property, in which activity he was sometimes successful. He denied that he stood in front of advancing vehicles to force them to stop or that he laid violent hands upon them.

The claimant is a practicing member of a recognized church well-known to be opposed to violence in any form. The claimant asserts that because of his religious principles he carefully avoided even the appearance of force or intimidation during his strike activities, and at all times counselled against the use of such tactics on the part of his fellow strikers. He contends in this appeal that throughout the strike he never went beyond verbal persuasion, and that at all times he conducted himself within the law while picketing. The employer representative testified that he himself had no knowledge, direct or indirect, of any activity on the part of the claimant exceeding such limits, but maintained that it was self-evident from the decision of the joint panel that the claimant must have been guilty of misconduct.

REASON FOR DECISION

By virtue of its stand in the instant case, the employer in effect contends that the decision of the joint panel which approved the claimant's discharge is sufficient to sustain his disqualification for benefits under Section 58(a)(2) (now section 1256 of the code). The Department in its determination and the Referee in his decision accepted this theory in finding the claimant guilty of disqualifying misconduct. We cannot sanction such a disposition of this case. It is our statutory duty to give to this claimant a fair and impartial hearing. We must decide this case upon an evaluation of all the evidence in the record before us, and should not depart therefrom in so doing.

We are not bound by the decision of the joint panel, nor may we infer from it alone that the claimant's activities during the strike were such as to constitute misconduct. The function of the panel was to decide whether or not the claimant's said activities were such as to justify a discharge. It is our function in this appeal to decide whether or not those activities were misconduct within the meaning of Section 58(a)(2) of the Act (now section 1256 of the code). These two functions differ in purpose and in end, and the basic issues with which they are concerned are wholly different. It is well settled that a discharge for cause is not of necessity a discharge for misconduct. For example, an employer may properly discharge an employee who is temperamentally unsuited to his job, but such a discharge would not be for misconduct in the absence of acts or omissions demonstrating a wilful or wanton disregard of the employee's duty as such. Moreover, it is our judgement, not that of the panel, which must prevail in this case at this stage of the matter. We would abdicate our statutory duty to adjudicate this appeal fairly and impartially if we were to consider that the action of the panel foreclosed us from making an independent evaluation of the facts of the case.

The only direct evidence before us as to the claimant's activities during the strike was offered by the claimant himself. The claimant's testimony exhibits complete candor and credibility, and gives every appearance of having been comprehensive of all his strike activities. The record reveals neither inherent inconsistency nor improbability in that testimony. There is

no evidence before us contradictory of it, and nothing to show that the joint panel had before it any evidence not adduced at the hearing before the Referee. The claimant's testimony is therefore entitled to its full measure of weight (Dillard vs. McKnight, 87 A.C.A. 1). The direct evidence of one witness who was entitled to full credit is sufficient proof to establish a fact (C.C.P. 1844; Klein vs. Farmer, 85 Cal. App. 2d 545).

The evidence in the instant case fails to establish that the claimant's activities during the strike exceeded the legal limitations upon picketing activities. It affirmatively shows that the claimant, though he picketed energetically, always did so within the confines of peaceful picketing. "Peaceful picketing" is picketing which does not interfere with another's person or property by unlawful use of force, violence, intimidation or threats. It is a right secured by constitutional provision and allows individuals to convey their opinions and promote their causes with respect to a labor controversy by presenting persuasive facts to other workmen in a legitimate manner (Ex parte Bell, 37 Cal. App. 2d 582). It is lawful so long as it remains an appeal to reason as distinct from a weapon of illegal coercion (7 Cal. Jur. Supp., Labor, Sec. 35).

To constitute misconduct under Section 58(a)(2) (now section 1256 of the code) the acts or omissions which brought about the discharge of a claimant must have been wrongful or improper in character. Inasmuch as the acts for which the claimant herein was discharged were acts done in the lawful exercise of his right to picket peacefully, they were neither wrongful nor improper. They did not therefore constitute disqualifying misconduct. Whether or not they were of a character to justify the employer in discharging him is a question neither pertinent to this case nor within our jurisdiction to decide. It is the conclusion of this Board that the claimant is not subject to disqualification for benefits with respect to his discharge on November 10, 1948.

DECISION

The decision of the referee is reversed. Benefits are allowed if the claimant is otherwise eligible.

Sacramento, California, April 29, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5361 is hereby designated as Precedent Decision No. P-B-187.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT